

SAPER LAW OFFICES

Intellectual Property and Business Attorneys



**IN FASHION AND
OUT OF TROUBLE:
LAW 101
FOR THE FASHION
DESIGNER**



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Discussion Topics



1. Forming a Business Entity
2. Filing a Trademark to Protect Your Label
3. Filing a Copyright to Protect Certain Designs
4. Trade Secret Protection
5. Federal Labeling Laws
6. Saper Law Client Case Studies

STEP ONE:



Form a Business Entity



Business Entity Basics



- Why should I form a business entity?
 - Personal Liability Protection
 - Credibility
 - Certain Tax Advantages
- What kind of entities are there?
 - Sole proprietorship
 - General partnership
 - "C" Corporation
 - "S" Corporation
 - Limited Liability Company

Considerations when choosing a business entity:

- Cost / Maintenance
 - State filing fees, annual filings, etc.
- Tax Liability
 - Pass-through taxation / Double taxation, and other issues determined by your accountant.
- Legal Liability
 - Personally liable or Protect your own assets with a corporate shield.
- Ownership / Management
 - Shareholders or Partners? Differing degrees of flexibility. Who do you want to be the decision-makers?



Piercing the Corporate veil

- Even if you have an entity you need to make sure you follow all corporate formalities so that if you get sued, the suing party can not “pierce the corporate veil.”
- **ALWAYS:**
 - Keep your personal and business expenses separate
 - Maintain detailed records
 - Hold annual meetings and abide by shareholder or operating agreements
 - Maintain sufficient funds in you business account



STEP TWO:



File a Trademark to Protect Your Label

TM



Trademark Basics



- What is a trademark?
 - A trademark can be anything that helps consumers identify the source of goods or services (words, jingle, tagline, packaging).
- Trademarks prevent marketplace confusion
- Trademarks protect logos, symbols, product names, product designs and packaging, domain names, images, etc.

Trademark Basics



What is a trade dress?

- The term “trade dress” refers to the characteristics of the visual appearance of product, including the shape, graphic design, color, and even smell.
- Trade dress status is informal and often not registered with the USPTO; however trade dress that meets certain requirements will be afforded protection similar to that of a trademark.
- In order to be classified as a trade dress, a product or design must be inherently distinctive and non-functional.

Trademark Basics



What are the benefits of a federal trademark?

- “Nationwide right of priority” which means you can prevent others from using your trademark in a way that would cause confusion---anywhere in the United States.
- Allows you to sue in federal court if an infringement occurs.
- Gives formal notice of the trademark and your ownership of it.

How do I get a trademark?



- Several steps are involved in obtaining a mark:
 - Determine if you have a viable mark
 - Determine if your mark isn't already taken
 - Decide on your class of goods
 - Complete the application form provided on the U.S. Patent and Trademark Office website
 - Best to speak to a *trademark* attorney
- The basic government filing fee is \$325 if you have already used the mark and \$425 if you haven't

STEP THREE:

*File a Copyright to Protect
Certain Designs*



Copyright Basics



What is a copyright?

- Copyrights are legal protection for creative works.
- A copyright is a set of exclusive rights given to an original author to regulate the use of a particular expression of ideas.
- Copyright owners have the exclusive right to make copies of the work, distribute copies of the work to the public, prepare derivative works, perform the work publicly, and display the work publicly.

Copyright versus Trademark



- Copyrights protect literary and artistic works. Trademarks protect words, symbols, slogans, logos, etc., used in commerce for goods and services.
- Copyrights require originality and expression in a tangible form. Trademarks do not require originality and the mark must be used in commerce.
- A single word can be protected by a trademark.

Copyright Basics



How do I get a copyright?

- Copyrights go into effect the moment you put your original, creative work to paper
- BUT: You need to register the mark in order to sue someone for infringement
- You can formally register your copyright for \$45 (copyright office filing fee).

What can a designer ©?



Limitations on fashion copyrights:

- Fabric patterns versus garment designs
 - No protection in garment designs
 - Considered “utilitarian”
 - Artwork on the clothing is copyrightable.
 - This includes prints and fabric designs

Copyright Basics



What is a *work-for-hire* agreement?

- If you hire an independent contractor to do work for you, have that contractor SIGN a work-for-hire agreement
- This means that they are agreeing that YOU own the copyright in the work they create
- Consult an attorney for help in drafting specialized contracts

STEP FOUR:



Protect Any Trade Secrets





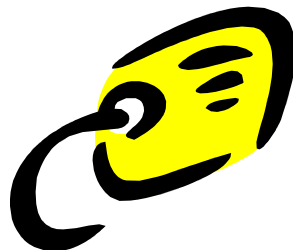
Trade Secret Basics

- A trade secret is a formula, practice, process, design, instrument, pattern, or compilation of information used by a business to obtain an advantage over competitors.
- Copyrights and patents expire with time, but work that can be classified as a trade secret can be protected indefinitely.
- State laws differ; in Illinois, work could qualify for trade secret protection if the information is valuable to others and the creator takes reasonable steps to keep it confidential.
- In the fashion world, trade secret protection may be available for customer lists or garment production processes.



STEP FIVE:

Comply with Labeling Requirements



FTC Labeling Requirements



1. Registered Identity Number (RN) or identity of the manufacturer
2. Fiber content
3. Country of origin

RN Requirement



- A Registered Identification Number, or RN, is a number issued by the Federal Trade Commission to U.S. businesses involved in the manufacture, distribution, import or sale of textile, wood, or fur products.
- Producers must label their textile products to include either their business name or RN.
- Companies located outside the U.S. may use their business name or the RN of their importer.
- The FTC recommends the use of an RN because:
 - it is *easy for buyers to identify* the company using an RN directory on the Internet,
 - it usually *takes up less space* on the label,
 - and it *facilitates record-keeping*.
- You can apply for an RN at www.ftc.gov.



Fiber Content

- All fibers that compose more than **5%** of the garment have to be named on the label; those that make up under 5% can be listed as “other fibers.”
- Wool must always be named and include its exact percentage of the composition of the garment.
- Trimmings do not have to have their fiber composition disclosed on the label, unless the trimming composes more than 15% of the item and is of a different fiber than the rest of the garment, or if the trim is advertised or referenced.
- Similarly, ornamentation and lining contents do not have to appear on the label unless they compose a certain percentage of the fabric or are advertised in any way.



Country of Origin

- Imported products must identify the country where they were processed or manufactured
- Products made entirely in the U.S. with materials made in the U.S. must be labeled “Made in U.S.A.” or with similar phrase
- Products made in part in the U.S. and in part abroad must state the country in which production took place. The label need not state what parts were made where, but it can. For example:

Made in Thailand,
finished in U.S.A.

Comforter made,
sewn, and finished
in U.S.A., with shell
made in Thailand

Shirt made in
Thailand,
screen printing
in U.S.A.

Assembled in
U.S.A of imported
components

STEP SIX:



Speak with an Attorney



Saper Law Client Case Studies



- Sonia invests in creating a label only to find that her name is already taken.
- Alex creates a label and has an artist create the logo. When he decides to manufacture the label on a large scale, the artist demands more money.

Saper Law Client Case Studies



- Molly has a line of shirts that use geographic words, like Illinois and Texas. She received a cease and desist letter because her shirts were infringing on several colleges' trademarks. Molly must throw out a lot of her inventory.
- Carla creates jewelry using found objects. Another jeweler creating similar jewelry sends her a cease and desist letter. Carla rightfully ignores the letter because ideas for jewelry or general fashion design cannot be protected.

Saper Law Client Case Studies



- Calvin uses images and photographs in his screen prints. If he did not create the images or photographs, he must obtain permission from the copyright holders.
- Manny wants to screen print pictures of celebrities on shirts and sell them. He needs to watch out for possible "Rights of Publicity" claims.



Any Questions?



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